

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00132
Petitioners: Eugene S. & Leona M. Souther
Respondent: Department of Local Government Finance
Parcel #: 002020301550065
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on November 5, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment value should be \$12,100. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. A hearing was held on August 26, 2004, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject property is located at 289 Wildwood Road, Cedar Creek Township, Lake County, Lowell.
6. The subject property is an unimproved residential lot¹.
7. The Special Master did not conduct an on-site visit of the property.

¹ The assessment for the subject parcel was appealed together with the assessment of an adjacent parcel, Parcel #002020301550064 (Lot 64), which is the Petitioner's residence. The Board will issue a separate Final Determination with regard to Lot 64.

8. Assessed Values of subject property as determined by the DLGF:
Improvement \$0 Land \$12,100

Assessed Values requested by Petitioners per the Form 139L are:
Improvement \$0 Land \$8,000

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
10. Persons sworn in at hearing:

For Petitioners: Eugene and Leona Souther, property owners

For Respondent: Larry Vales, Cole-Layer-Trumble, representing the DLGF

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The assessed value of the subject lot is not in line with the assessed value and sale price of a comparable vacant lot (Lot 38). *Souther testimony*.
 - b) The subject lot is smaller than Lot 38 and has less actual and effective frontage than Lot 38, yet the subject lot is assessed at \$12,100 while Lot 38 is assessed at only \$3,600. *Souther testimony & Petitioners Exhibits 7 – 8*. In addition, Lot 38 sold in April 1999 for \$3,500. *Souther testimony*. The Petitioners do not believe that it is fair that the subject lot is assessed for an amount so far in excess of the amount for which a larger lot with the same amenities is assessed.
 - c) Given the actual location of the lot, it should not be considered as lakefront property. *Souther testimony & Petitioners Exhibit 4*.

Record

12. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co. #386.
 - c) Exhibits:
 - Petitioners Exhibit 1: Form 139L petition
 - Petitioners Exhibit 2: Form 11 Notice of Assessment

Petitioners Exhibit 3: Notice of Final Assessment
Petitioners Exhibit 4: County plot plan
Petitioners Exhibit 5: Sale information for Lot 38
Petitioners Exhibit 6: Other parcels being appealed by Petitioners
Petitioners Exhibit 7: Subject (Lot 65) property record card (PRC)
Petitioners Exhibit 8: PRC for Lot 38
Petitioners Exhibit 9: Printout of lot assessment details for Lot 38
Petitioners Exhibit 10: Sales Disclosure for Lot 38 dated April 22, 1999

Respondent Exhibit 1: Form 139L petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Aerial map of the area

Board Exhibit A: Form 139 L petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable laws are:
- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. The Petitioners presented testimony and evidence that included PRCs for the subject lot and Lot 38 and sales information for Lot 38. *Souther testimony & Petitioners Exhibits 4, 5, & 7 thru 10.*

15. The Respondent reviewed the Petitioners' evidence and agreed that the subject lot was smaller than Lot 38. The Respondent asked the Petitioner, Eugene S. Souther, if he would accept a reduction in the land value to \$3,500. *Vales testimony*. The Petitioner agreed to accept this value. *Souther testimony*.

Conclusion

16. At the hearing, the parties agreed that the subject lot should be valued at \$3,500.
17. The agreement between the Petitioners and Respondent is a decision between these parties and the Board will accept the agreement. The Board's acceptance of the agreement should not be construed as a determination regarding the propriety of the land value agreed to by the parties.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.